

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DECLARATION OF DAVID
SCHAEFER IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

**Note on Motion Calendar:
July 1, 2022**

Oral Argument Requested

I, David Schaefer, under penalty of perjury under the laws of the United States, state
and declare as follows:

1. I am an Officer and Director of Defendant Phoenix Digital Group LLC, one of
the Counter-Claimants in the above captioned matter, as well as one of the
individual Defendants in the above captioned matter and have knowledge of
the facts stated herein.
2. Since at least as early as 2017, Phoenix Digital Group LLC has required its
customers and subscribers to its services to agree to the terms of Phoenix
Digital Group LLC's "Terms of Service," a copy of which is attached to
Defendants' Answer and Counterclaim (Dkt#63) as "Exhibit C." These Terms
of Service were in effect as early as 2017, were in effect on January 3, 2020,

1 and were in effect up until the sale of the aimjunkies.com website on May 5,
2 2022.

3 3. Phoenix Digital Group LLC is the owner of software, known as “cheat loader”
4 software, that Phoenix Digital uses to facilitate the transfer of programs
5 developed by others to subscribers to Phoenix Digital’s services. Phoenix
6 Digital claims, owns and enjoys copyright protection for its “cheat loader”
7 software.

8 4. Phoenix Digital uses technological measures to prevent unauthorized access to
9 its protected cheat loader software. In particular, the Phoenix Digital cheat
10 loader software is protected against reverse engineering by means of a
11 commercially available tool called “Themida.” This tool obfuscates and
12 protects the software code so that the process of reverse engineering is
13 extremely slowed or entirely stopped. Themida employs their proprietary
14 SecureEngine technology to add anti-cracking techniques to the executable,
15 adding protection to prevent analysis and modification of the protected
16 software. A feature list for the Themida software can be found at this URL:

17 <https://www.oreans.com/Themida.php>.

18 5. Phoenix Digital has suffered damages as a result of Bungie’s breach of the
19 Phoenix Digital Terms of Service. As a result of the allegations made in this
20 lawsuit, and in particular the various allegations made by Bungie “on
21 information and belief” regarding the products distributed by Phoenix Digital,
22 Phoenix Digital reasonably believed and continues to believe that Bungie has
23 compromised the security of the Phoenix Digital cheat loader. This forced
24 Phoenix Digital to redesign and re-write the cheat loader, at significant cost
25 and effort to Phoenix Digital.

26 6. Phoenix Digital has suffered further damages as a result of Bungie’s breach of
27 the Phoenix Digital Terms of Service. In particular, Phoenix Digital has been
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1 damaged by the adverse publicity and loss of market share caused by Bungie's
2 baseless claims that Phoenix Digital "copied" Bungie's materials. Bungie's
3 false claims are based, at least in part, on Bungie's unauthorized reverse
4 engineering of the Phoenix Digital cheat loader software in violation of the
5 Phoenix Digital Terms of Service. In particular, in mid 2021 before this
6 lawsuit was filed, Phoenix Digital was in discussions with others concerning
7 sale of the AimJunkies website. Following the filing of this lawsuit and the
8 adverse publicity that resulted, the sale did not take place then. Eventually, the
9 AimJunkies website was sold in May, 2022 at a greatly reduced price
10 compared to what the website could have been sold for absent the baseless and
11 abusive lawsuit filed by Bungie, which Bungie bases on its unauthorized
12 analysis of the Phoenix Digital cheat loader software, in breach of the Phoenix
13 Digital Terms of Service.

14 Dated October 24, 2022.

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David Schaefer
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14 Dated October 24, 2022.

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